

# Facilitating State & Tribal Assumption of CWA §404

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# Background

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- ▶ What is Assumption?
  - ▶ CWA 404(g) – authority for states and tribes to assume administration of the permitting program for certain waters. EPA approval of a state or tribe to administer a CWA 404 permitting program pursuant to state/tribal authorities.
- ▶ Why assume? States and tribes have said:
  - ▶ Streamline permitting – timeframes and with other state programs.
  - ▶ Knowledge of and closer to the water resources.
- ▶ What barriers have states and tribes noted?
  - ▶ Lack of clarity on requirements including which waters are assumable.
  - ▶ Protections for threatened and endangered species.
  - ▶ Lack of dedicated funding.

I'm sure you all are familiar with this, but just as a reminder

Some of these challenges EPA is working to address where others we cannot.

For example we cannot provide funding for implementation,; however,

We can help fund development of programs through our WPDGs

States and tribes can use their 106 funding

States and tribes can charge permit fees – MI and NJ do this

FL is not intending to charge fees for 404; however, they do charge for their ERP permits which have similar requirements to 404

MI issues X permits per year and year and charges charges permit fees ranging from \$50 for homeowners to X for large developments or mining operations,

NJ issues X permits per year and charges charges permit fees ranging from \$50 for homeowners to X for large developments or industrial operations, they also use some general funds – originally structured to be self funding, now fees go to state treasury and they receive a budget. They also charge up to \$10k for a JD

## EPA Activities

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- ▶ Convened Federal Advisory Committee (FACA) on assumable waters - recommendations delivered to EPA Administrator 7/1/17.
- ▶ Initiated rulemaking to update assumption regulations – 5/18; proposed update will:
  - ▶ Clarify which waters are assumable – considering recommendations of the FACA;
  - ▶ Make technical updates such as allowing electronic reporting; and
  - ▶ Clarify other requirements identified as potentially needing revision.
- ▶ Working directly with states and tribes interested in pursuing assumption.
- ▶ Developing a webpage as a resource for state and tribal agencies interested in assumption or currently administering an approved program.
- ▶ Increasing HQ staff team knowledgeable about assumption.

### Technical updates –

Clarifying where mitigation regulations direct the District engineer to chair the IRT that in approved s/t programs the state is the chair or could co-chair etc.

Where the EPA address is

Clarification on ESA consultation requirements

Currently working with : FL, AZ, IN, VT, NH, MN have heard others are interested but they have not actively engaged us at this time.

- If you are interested, we encourage you to reach out to your EPA Regional counterpart. WE want you to develop the program that works for you, if that is assumption, we want to help ensure the program is consistent with the Act so we can approve it.

## Preliminary Issues to Address in Proposed Rule

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- ▶ Clarification of which waters are assumable as informed by FACA subcommittee recommendations.
- ▶ Clarification of requirements and removal of state and tribal identified "barriers" raised during:
  - ▶ EPA surveys in 1994, 2002, and 2007.
  - ▶ ECOS workgroup – 2010 lean effort to identify barriers and streamline assumption.
  - ▶ FACA on assumable waters – identified other issues in the regulations.
  - ▶ Requests from states, tribes and associations – letters, workshops, meetings.
  - ▶ Experience working with states and tribes, investigating and pursuing assumption.

- Recent efforts of FL, MD, OR, OH, AZ and others have identified areas that could benefit from additional clarity either in the regulations or in an FAQ document or guidance.

# Current Schedule & Opportunity for Engagement

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## Schedule

- ▶ Fall 2018 - Initiate Federalism Consultation and Tribal Consultation
  - ▶ In-person meeting(s) as well as webinar(s).
- ▶ September 2019 - Propose revision to regulations; public comment period with additional outreach.
- ▶ September 2020 - Final action.

## As we move forward

- ▶ Please provide us your thoughts and suggestions.
- ▶ As you comment, think about what will make this implementable in the field and nationally.

EPA is committed to collaborating with states and tribes.

Will engage in federalism consultation.

Will engage in Tribal consultation.

S&T will have ability to comment during federalism, public comment periods, public meetings.

EPA will work with states and tribes interested in assumption or development of any wetlands or dredged or fill permitting program.



Questions about assumption or EPA's efforts?  
Please contact:

- Your regional office
- Myself, John Goodin
- My staff – Brian Frazer – Acting Division Director, Mindy Eisenberg – Associate Division Director, Michael McDavit – Branch Chief, Kathy Hurd, Ruth Chemerys, or Dolores Wesson
- All emails are: [lastname.firstname@epa.gov](mailto:lastname.firstname@epa.gov) e.g., [goodin.john@epa.gov](mailto:goodin.john@epa.gov)